if a drawer had been forced, the lock would be damaged. In this particular case two drawers were shown to have been forced. Yet the witness said that two keys "fitted the drawers", (assuming by this he meant that the two keys could work the locks of the drawers). It may be possible for one lock not to be damaged after having been forced but any person would hesitate to believe that two locks were undamaged after having been forced.

These are very material points to the prosecution case, as they are the ones which decided whether the appellant had a case to answer. No doubt the rule is that if a witness had lied on one or two points it does not necessarily follow that his whole evidence should be rejected. (*Khoon Chye Hin* v. *Public Prosecutor*[2]). But it is the duty of the court to sieve the evidence and to ascertain what are the parts of the evidence tending to incriminate the accused which could be accepted. In this case however the learned magistrate did not do so. He accepted the evidence of P.W.1 wholesale without rejecting the parts which had been shown to be inconsistent with the truth.

Apart from the above, learned counsel for the appellant at the close of the case for the prosecution submitted that, in the circumstances of the case, the table should have been produced. The prosecution officer, much to his credit, did also in effect say that the table was vital to the case and should have been seized. I entirely agree with them. It should have been produced in view of the conflicting testimony of P.W.1 on very material points as regards the table. On this consideration alone since it was not produced, the only inference to be drawn is that if it had been produced it would have been unfavourable to the prosecution.

As far as I can see at the most that can be said of the prosecution case is that it only adduced evidence that the incriminating exhibits were found in the premises. It would be a matter of doubt if P2 and P3 were in fact recovered from the drawers of the table, since in regard to the table it is doubtful if P.W.1 did force the drawers. Since in regard to two keys found on the appellant it is doubtful if they fit the drawers, the presumption should arise that if the drawers had been forced the keys could not have worked the locks. (Indeed it was established in the defence that they were actually for locks in a cupboard in the appellant's house).

The prosecution adduced no evidence to show the relationship of the appellant with the business of the premises as required by the very principles in the case cited by the learned magistrate. The case for the prosecution as it stood in view of the conflicting testimony of P.W.1 was no better than that against the acquitted man.

I would therefore allow the appeal. Conviction and sentence quashed. The fine, if paid, is to be refunded.

Appeal allowed. Conviction and sentence quashed.

Solicitors: *R. Ramason.*

VELUPILLAI v. GOVERNMENT OF MALAYSIA & ANOR.

[O.C.J. (Chang Min Tat J.) February 19, 1970]

[Ipoh — Civil Suit No. 67 of 1967]

Negligence — Nurse drinking eserine under mistaken idea that it was drinking water and dying from effects thereof — Poison left with bottles of water in refrigerator at hospital — Bottle properly labelled — Negligence of deceased — No negligence on part of hospital authorities in treatment.

Master and Servant — Trained employee — Experience and proficiency — Risk of accident — Carelessness of employee.

The deceased had been a staff nurse and had drunk from a bottle of white liquid under the mistaken idea that it contained drinking water. The liquid was in fact eserine and from the effect of drinking it she died. It appeared in evidence that poisons and drinking water were left in the refrigerator in the hospital but that the bottle containing the eserine was properly labelled. It was also contended that the hospital authorities had been negligent in treating the deceased in not immediately administering gastric lavage.

Held: (1) in this case the cause of the accident was due entirely to the deceased drinking the contents of the bottle containing eserine without ascertaining as she should have done, the nature of the contents by taking the elementary and simple precaution of reading the labels thereon;

(2) in the circumstances of the case the plaintiff had not discharged the onus of establishing negligence on the part of the hospital authorities or any of its servants through any delay occasioned by not administering the gastric lavage in the casualty room.

Cases referred to:-

(1) *Morris* v. *West Hartlepool Steam Navigation Co. Ltd.* [1954] 2 Lloyds Rep. 507; on appeal [1956] 1 W.L.R. 177, H.L.

(2) *Norris* v. *W. Moss & Sons Ltd.* [1954] 1 W.L.R. 346.

CIVIL SUIT.

Dato' S. P. Seenivasagam (*A. Mahendran* with him) for the plaintiff.

Ajaib Singh (Senior Federal Counsel) for the defendants.

Cur. Adv. Vult.

Chang Min Tat J.: A staff nurse of some 14 years' standing drank from a bottle of white liquid under the mistaken idea that it contained drinking water. The liquid was in fact a 1% solution of eserine. From the effects of the eserine she died, and her father as administrator of her estate now sues the Government of Malaysia and Dr. F. X. Fernandez, her departmental head, for damages for negligence.

At the time of her death she was in receipt of a monthly emolument of $465. She was then about 35 years old. She was not married and her father said she had no intention of getting married, her ambition being to rise in her chosen profession to the dizzy heights of a nursing sister. He averred that she used to give him about $300 to $310 a month and that this sum was sent to one of his sons in England, then reading law. This sum was apparently not sufficient as, according to the plaintiff, he had to supplement it. He did not retain any of it for himself. At the hearing, this law student was sitting for his Bar Finals. Since the death of his daughter the plaintiff had to depend upon his other children for help, and in the context of

his evidence, I must assume that this help was in contribution to the needs of the law student, and of no other. The plaintiff is a pensioner, his pension being $127 a month at the time of the death but it is now increased to $206 a month. From this it is reasonably clear that the plaintiff and his wife are not dependent upon the deceased for any contribution to their own sustenance. What dependency there was was that of the Bar candidate. Now the death occurred 3½ years prior to the hearing and in cross-examination the plaintiff admitted that for some two years prior to her death she used to give him at least $300 per month. On the evidence of the plaintiff I must necessarily find that the loss of dependency was sustained not by the parents of the deceased but by her brother, the law student. It would appear that this contribution of $300 started with the despatch of the brother for his law studies. The dependency from the death to the hearing would be about 3½ years and the amount at $300 a month would be some $12,000. There may well be future loss of dependency for the mother if she should survive her husband as the pension dies with the holder. I cannot find however any evidence that the mother is still alive. I think it should be realised that if any party wants damages to be assessed by the court that party must adduce all the evidence he has to assist the court in coming to a just decision. In view of the evidence given in this case, on the basis of full liability I would award $2,000 for special damages, being the sum claimed to have been spent on the funeral and a lump sum of $10,000 for general damages into which any sum that needs to be awarded for loss of expectation of life must become merged.

On the question of liability, the plaintiff's claim was made to hinge to a very great extent on the allegation of P.W.3, a sister of the staff nurse, that she had heard an admission of gross negligence. This girl of 34 years of age, and unemployed, was very definite that after her sister's death, she heard Dr. Lee Chin Thuan, the consultant physician of the General Hospital who came to see to the administration of remedial measures to the nurse, say to Dr. Fernandez "It is a real tragedy, but we have to squash the matter as the bottle was not labelled." If in a hospital a bottle of deadly poison, whose apparent characteristic is that of drinking water, was not labelled, then there is nothing more to be said in this case. The hospital was clearly negligent and the only thing that remained for me to do was to assess damages. Whether the bottle was labelled or not became therefore one of the cruxes of the case. It is of course appreciated that in bringing this case into court the plaintiff had to rely to a very great extent on the evidence of witnesses in the employ of the Government, and such evidence as there might be in his favour could only be extracted with great reluctance. It was therefore not surprising to find that the evidence adduced by the plaintiff contained specific denials of this allegation. In the first place, Pandranjam P.W.2, a hospital assistant, said that when the deceased admitted to him that she had drunk the poison by mistake, she realised it when she found the taste somewhat different and she had then looked at the label. It was from the label that she could say that she had drunk some eserine. Then P.W.5, Joseph Chai, another hospital assistant and the one in charge of the eye clinic, was very clear in his mind that the bottle was labelled. He said that when he heard of the poisoning he went to the ward where the deceased was being attended to and then later, on being instructed by the eye-specialist, he went to the eye clinic and took possession of the eserine bottle and kept it under lock and key in a separate cupboard. When he recovered the eserine bottle, he found it already labelled, as it is now, with two labels. The bottle that was produced as an exhibit bore two labels which this witness identified as the ones he saw when he recovered the bottle. The two labels read "eserine drops" and in Malay "poison, not to be taken internally." These two hospital assistants were of course witnesses for the plaintiff.

Dr. Lee Chin Thuan for the defence and on his own behalf though he was never a defendant in the sense of being a party joined in the action, naturally denied that he ever said those words. It must have been a great shock to him to hear that he was accused of the very serious charge of suppressing or attempting to suppress evidence. But fortunately for him, the defence did not rely entirely and solely upon his denial. The eye-specialist was called and he confirmed what Joseph Chai said. He also denied that Dr. Lee Chin Thuan ever addressed those remarks to him. It also produced the dispenser, D.W.5, who had dispensed the actual eserine solution that was taken. He said when he was supplied with the bottle it was already labelled. D.W.6, the staff nurse who supplied the bottle, also testified that it was she who had stuck the two labels on the bottle before she sent it to the dispensary. The evidence of these two witnesses was not challenged in cross-examination. I myself ascertained from Dr. Lee Chin Thuan that when he received the phone call from Dr. Menon, he went from his office to the ward when the deceased staff nurse was being attended to and that in going across to the ward he did not have to nor did he in fact pass the eye-clinic where the eserine bottle was kept. He had therefore not seen the bottle at any time up to the death of the deceased and he therefore could not know whether or not the bottle was in fact labelled. He also said that the first time he ever saw the bottle of eserine was when it was shown to him at the preliminary enquiry. His evidence on this point was similarly not challenged. On this evidence I am as certain as anyone can be that Dr. Lee Chin Thuan did not say these words, and that the allegation of the deceased's sister that he did was pure fabrication on her part. Dato Seenivasagam, who appeared for the plaintiff, was merely refusing to continue to flog a dead horse when he indicated to the court that he was not pursuing this allegation of an admission of negligence against Dr. Lee Chin Thuan. I therefore come to the first finding of fact that the bottle was labelled.

But of course the case for the plaintiff did not end there and he was heard to say that the eserine was kept in a bottle in such a way that it facilitated or rendered possible any mistake made in taking it as drinking water and that this storage must necessarily be the negligence of the hospital authorities in general

and the second defendant in particular so as to found his claim for damages. He said that the eserine which is a deadly poison should be kept in the first place in a ribbed coloured bottle and this was particularly necessary since eserine in its fresh state was colourless and almost indistinguishable from water, so that anyone holding the bottle of eserine could by sight or by touch know that it contained poison. Then again the plaintiff alleged that by allowing the staff of the eye clinic to keep drinking water in a fridge that was used and should be reserved solely for the storage of poison, the hospital authorities were by that fact itself negligent.

In my view there can be no answer to this claim if it was made by a member of the public who was allowed either permissively or tacitly access to this fridge. But the deceased was not any member of the public. She was a member of the staff and she had been a nurse for 14 years, for a part of which period she was a staff nurse, and this submission must be considered in the light of this circumstance. There is evidence that the fridge in which the eserine was stored was in two compartments and that poisons were normally kept in one compartment and drinking water in the other compartment and also evidence that the drinking water was kept in rather bigger bottles, bottles that were either whisky or gin bottles. This particular bottle in which eserine was kept was a tomato ketchup bottle and though it is somewhat smaller by feel and by sight than a whisky or a gin bottle, it was still rather bigger than the normal eye-drop bottle. This ketchup bottle was not the normal one used, but by a set of unfortunate circumstances the usual bottle for dispensing eserine was misplaced by the dispensing department on the 5th February, 1966 so that D.W. 6 had to supply another bottle and the bottle that came to her hands was this tomato ketchup bottle.

The question then is: was the hospital negligent towards the deceased in storing what must be regarded as a dangerous substance in this tomato ketchup bottle in the fridge. As I have said earlier there can be no defence on these facts to a claim by a member of the public. It would clearly be a breach of the duty of care that the Government owes to the general public or to such members of the general public which it knows or must reasonably be taken to know, would have access to the fridge. Now a breach of duty is constituted by conduct which falls short of the standard set by law. This is merely another way of saying that the standard of care is a question of law. It is the standard of a reasonable and prudent man. The concept of a reasonable man is quite often nebulous but it is nevertheless a useful standard to go by. The general public cannot be reasonably expected to bear in mind the existence of poisons in the fridge and the grave necessity in a hospital or clinic to read the labels on the bottles. But the deceased was not any member of the public. She was an employee of the defendant Government of Malaysia, and this case stands to be decided on the duty of an employer to its employee.

The duty of an employer to its employees is expressed in the following passage from the judgment of Parker L.J. in *Morris* v. *West Hartlepool Steam Navigation Co. Ltd.*[1] at page 518:

> "What then is the reasonable and prudent employer bound and entitled to take into consideration? He is certainly (1) bound to take into consideration the degree of injury likely to result; (2) bound to take into consideration the degree of risk of accident; (3) entitled to take into consideration the degree of risk, if any, involved in taking precautionary measures."

Later on in his judgment, Parker L.J. indicated that the decision of the matter must depend on whether, balancing these considerations the plaintiff has proved that the omission of the precaution relied on was a thing which the employer as prudent and reasonable employer, should have thought so obvious that it was unreasonable or imprudent to omit it. Lord Cohen L.J. in the same case on appeal to the House of Lords ([1956] 1 W.L.R. 177) in his speech at page 199 while approving of this approach added that account must be taken of any other factors which might be relevant in a particular case.

With respect, I adopt the same approach. In my view, the degree of injury likely to result from storing poisons in plain and not coloured ribbed bottles in a fridge together with drinking water is lessened considerably if not to a negligible degree by the precaution of labelling the bottles, and in my view, there can be no degree of risk of accident where a trained employee is concerned.

Now the deceased had undergone a long period of training under the hospital authorities and had acquired such considerable experience and proficiency as to obtain promotion to the position of a staff nurse. Even as a nurse and not a staff nurse, one would expect her as one would expect anyone with any medical training in a hospital to look at the label on any bottle before making use of its contents. In the same way one would expect any counsel to ascertain that the book from which he is reading is the book he intends to read and that he could only ascertain by looking at the title. It appears very clearly on the evidence that the deceased did not look at the label, and therein lies the immediate and proximate cause of the tragedy. She opened the fridge, took out a bottle and proceeded to pour the contents down her throat in the Indian fashion of drinking, which had the hygienic value of not contaminating the mouth of the bottle with the lips of the drinker, but it had the disadvantage of avoiding the taste buds which are generally situated at the tip and the sides of the tongue, so that in this fashion, the drinker did not normally taste the liquid until the action of swallowing is made. That she should do so without ascertaining the nature of the contents from the label is most astonishing behaviour on her part but her character as adduced in evidence, though denied by her father, explained her extraordinary behaviour. In the evidence of her colleagues, she was always in a hurry and always in a fluster and that all and all she was, as the Malay language so aptly describes such a person, "kalang kabut."

In view of the special status of the deceased, it seems to me that to base a case of negligence on the basis of storage, as the plaintiff endeavours to do by

his particulars (a) to (k) of negligence against the defendants would be to resort to the well-worn and legally incorrect argument of a lost nail resulting in a lost kingdom, and with respect I adopt the following judgment of Vaisey J. in *Norris* v. *W. Moss & Sons Ltd.*[2] at page 351 to reject the submission:

"I am of the same opinion. It is sometimes difficult to decide whether an antecedent act or event is the cause,or one of the causes, of a subsequent event; or whether, on the other hand, it is merely one of the surrounding circumstances in which, or part of the background in front of which the subsequent event has taken place. Here it seems to me that the accident to the plaintiff was due entirely to his own negligence in doing a piece of work, well within his competence, in a manner which the judge described as 'fantastically wrong.' True it is that it was upon the leaning standard that the work in question had to be carried out, but the fact that the standard was in that condition cannot in my judgment be treated as being in any reasonable sense a cause of the accident. It is not, I think, admissible to construct chains of causation in a case such as this where a single cause, simple, obvious and amply sufficient to account for what happened is to be found in the inexcusably careless behaviour of the workman himself. The argument in the old fable in which the loss of a kingdom is traced back to an originating and ultimate cause in the loss of a single nail from a horse's shoe does not commend itself to me as adaptable to this case. I concur in the reasoning of my Lords following that of Stable J. and I agree that this appeal fails, and should be dismissed."

In this case before me, the cause of the accident was due entirely to the deceased drinking the contents of a bottle containing eserine without ascertaining the nature of the contents by taking the elementary and simple precaution of reading the labels thereon. Further, eserine is of an extremely bitter taste and the first passage of even a bit of the liquid over the taste buds would have warned her that what she was drinking was not plain water. Her habit of drinking resulted in her drinking an inordinate quantity of the poison.

The next complaint (l) is that the defendants failed to procure the attendance of a person medically skilled to provide the necessary treatment. There was in attendance on the deceased a qualified doctor, Dr. Menon, against whom not a word was said in evidence. She referred to the consultant physician Dr. Lee Chin Thuan for a second opinion and the consultant physician himself came to the ward to see to the remedial measures taken. In view of this evidence, I do not think that the plaintiff was correct in this particular of negligence, nor in particular (q) in which the plaintiff alleged failure to call immediately for the assistance of the physician.

It is also alleged in particular (o) that there was a failure to administer immediately the antidote to the alleged poison. What the antidote to eserine was was never proved, but I think it is reasonably clear from a reference to any pharmacopoeia that there is no antidote to eserine in the sense of something that neutralises the direct chemical nature of and renders harmless the poison and that the treatment of choice is the administering of atropine which antagonises some but not all the effects of the drug. At page 341 of *D. R. Lawrence's* Clinical Pharmacology (3rd Edition, 1966) appears this sentence

"atropine antagonises all the effects of choline drugs except those at autonomic ganglia and the neuromuscular junction."

Atropine was in fact administered in this case and in sufficient quantities and apart from supportive and remedial measures, which were in fact taken, it did not appear that there was anything else that the doctors in attendance could have done.

Then it is said in particular (m) that there had been unreasonable delay and negligence in not administering proper medical care and specifically in particular (n) in not requiring the deceased to regurgitate and in particular (p) in not administering the stomach wash at the out-door dispensary. What the plaintiff means is not the out-door dispensary but the casualty-room next door.

In oral poisoning, the acute necessity of evacuating the poison from the stomach is often achieved by the administration of an injection of apomorphine which is a powerful emetic. Medical opinions on both sides are agreed on this, but it was also agreed by Dr. Dato Megat Khas for the plaintiff in cross-examination that where a patient had lapsed into unconsciousness, apomorphine would not have any effect in stimulating the vomitting centre of the brain to achieve the effect of regurgitation. The evidence in this case is to the effect that while complaining to the doctor in charge of the casualty room, Dr. Kooi, of having taken eserine and before what she said was fully taken in and believed, she collapsed and became unconscious. In these circumstances, Dr. Dato Megat Khas admitted that apomorphine would be absolutely ineffective. No charge of negligence could therefore be raised against the hospital for failure to administer any emetic on the part of Dr. Kooi and the other medical officers.

Now Dr. Kooi was never made a party to the proceedings but from the state of the pleadings and from the evidence, it became clear that he was the target of the allegations of failure to administer the gastric lavage or stomach wash-out and atropine at the casualty-room where he was the first medical officer to receive the deceased's complaint. No application was however made to court to strike out these allegations against someone not made a party to the proceedings and no objection was taken to the evidence or to the cross-examination of Dr. Kooi in these matters and the case proceeded on the basis of the liability of the Government of Malaysia for the negligence, if any, of Dr. Kooi.

At this stage, it is necessary to refer to the evidence. Joseph Chai (P.W.5) said that the deceased saw him about an eye case between 3.40 and 3.45 p.m. that day, and after that, she left the eye clinic. Nothing untowards happened until Joseph Chai left the eye-clinic. He only knew of the deceased's admission into hospital as a poisoning case after work. This could of course mean one of two things, either that the deceased took the eserine while Joseph Chai was in the clinic at about 3.45 p.m. or immediately after and without making an immediate fuss about it or that she took it after Joseph Chai had left the clinic. The next bit of evidence came from Meenachi d/o Sundram (P.W.4) who said that the deceased met her at sometime past 3.30 p.m. or about 4.00 p.m. when the deceased told her of her having taken the eserine. The

deceased was then on her way to the casualty room. Meenachi saw her go to the casualty room and saw her collapse. Next, Pandranjam s/o Marimuthu (P.W.2) testified that at about 4.15 p.m. or 4.20 p.m. the deceased came to him at the admission room and there told him how she had mistaken the eserine bottle for drinking water. He then informed Dr. Kooi who was at that time in the admission room and who immediately came and talked to her. Shortly afterwards, the deceased collapsed. She was then put on to a wheel chair and taken to the casualty room next door. Dr. Kooi in his turn said he saw the deceased at about 4.20 p.m. in the admission room. In his evidence Dr. Kooi also said that the deceased did not appear very concerned that the poisoning was very serious and could be fatal and was not keen to get admitted. Dr. Kooi then telephoned Dr. Fernandez, the second defendant and the deceased's departmental head, and he was told to ward the deceased as a case of poisoning of an unknown origin. At this time the deceased collapsed. Dr. Kooi had her taken in a wheel chair to the casualty room and there he examined her. He found the pulse and the heart-beats satisfactory. Dr. Kooi then had her sent to the ward for a stomach wash-out. He did not order a stomach wash-out at the casualty room or carry it out himself there and then. There was equipment in the casualty room for him to do the wash-out there.

In explanation, Dr. Kooi said that the usual procedure at the Ipoh General Hospital was to send a case for a wash-out to the ward, because the facilities there were better and there was more staff. In the casualty room, there were only himself, a hospital assistant and an attendant and there was always the possibility of new admissions to the casualty room at any time. Dr. Lee Chin Thuan testified similarly to this practice. Dr. Dato Megat Khas agreed that stomach wash-out was usually done in the ward, but said that in an urgent case as in poisoning, he would have carried out the wash-out in the casualty room.

Now I have no doubt that the answer to a charge of negligence on the part of the hospital or any of its officers is not reliance on any hard and fast rule or practice but the reasonable reaction to a given situation and in the light of one's knowledge. Dr. Kooi found the staff nurse's heart and pulse beats satisfactory and it must be in the light of these findings and also, of course, following the usual practice in the hospital, that he had her sent to the ward for a stomach wash-out. The distance from the casualty room to the ward to which the staff-nurse was sent was a matter of some doubt and at the request of counsel from both sides, I visited the hospital and there I paced the distance from the casualty room to the ward. I did it a second time at the request of counsel for the plaintiff, this time accompanying a wheel-chair in which was seated someone. On each occasion, I found that at a brisk but not abnormally fast walking pace, the time taken was 2 minutes 15 seconds. Therefore, in my view the question whether Dr. Kooi was justified on his medical findings in deciding to send the staff nurse to the ward or whether he should have administered the stomach wash-out in the casualty room remains to be determined by the answer to the question whether at the time of his decision, a delay of some 2½ minutes would inevitably result in a fatality.

Dr. Dato Megat Khas maintained that the early administration of a stomach wash-out would result in greater chances of recovery and that this is generally believed is no doubt reflected in the general practice of applying this measure to poisoning cases and in this case by the administration of a stomach wash-out on the staff nurse. But as Dr. Lee Chin Thuan pointed out, medical opinion is, at least among some practitioners, veering away from this hitherto accepted practice and drew my attention to the following passage occurring at page 606 of *Lawrence's* Clinical Pharmacology, *supra*:

> "If the patient is unconscious gastric aspiration should be performed if the drug was taken within 4 hours. If the drug was taken within 1 hour, then aspiration, followed by lavage with a small volume (1 litre) of liquid, is worthwhile.
>
> However, the above view is not unanimously held, and some still feel that gastric lavage must always be done, despite the fact that evidence is accumulating in favour of the contrary view. Because it also satisfies the physician's urge to be, and to be seen to be, active in the patient's interest, this time-hallowed manoeuvre will doubtless retain favour with some even if the evidence against its indiscriminate use becomes stronger than it now is.
>
> The Copenhagen Poison Centre, which treats about 800 unconscious patients a year, has abandoned gastric lavage on the unconscious, and only uses it on 'conscious patients with a history of having swallowed tablets not longer than one hour before admission. Gastric lavage is never performed on unconscious patients.... Central stimulants are never used'."

It would thus appear that so far as gastric lavage is concerned as the sole supportive measure or in conjunction with other remedial and supportive measures, its usage is not a matter of absolute certainty.

Moreover, it seems to me that the deceased was herself largely contributory to the delay in her treatment. From the evidence of Meenachi (P.W.4) and Pandranjam (P.W.2) she did not apparently realise the deadliness of the poison she had drunk. There was no sense of urgency in her words or movement when she met Meenachi. She did not seek any treatment immediately. All she did was to ask Pandranjam (P.W.2), an old friend whether the eserine was dangerous. It would appear from this that she did not create an uproar or draw attention at the eye-clinic to her mistake immediately upon drinking the poison. Apart from her failure of realisation, the poison has the peculiar effect initially of inducing mental confusion and a sense of unreality (see *Lawrence's* Clinical Pharmacology at page 347). The combination of these two factors appear to me to result in a delay for which the deceased must herself be responsible. The time that elapsed between her drinking and her presence before Dr. Kooi cannot now be exactly determined. Both P.W.2 and Dr. Kooi stated they saw the deceased at the admission room at about 4.15 or 4.20 p.m. Joseph Chai P.W.5 stated that he saw her at about 3.45 p.m., i.e. before she had taken the poison. Meenachi (P.W.4) said she met the deceased at about 4.00 p.m. on her way to the admission room, a few yards away. She was of course not definite. As against her evidence, the evidence of P.W.2 who as the person then in charge of admission must be con-

cerned with time, would appear to establish that Meenachi (P.W.4) could not be accurate. Perhaps all that could be said was that at the very most, if she had taken the eserine shortly after seeing Joseph Chai at 3.45 p.m. and had seen P.W.2 and Dr. Kooi at about 4.15 p.m., half an hour had elapsed. It could be less but certainly there was a delay on her part.

In this connection, the quantity of the poison ingested becomes important. On her own admission to P.W.2, the deceased had taken about 2 ozs. of a 1% solution of eserine. Now 2 ozs. are little more than a gulp and the Indian fashion of drinking makes for several gulps since gravity ensures a continuous flow and there is no quick realisation from the taste of the liquid drunk. But there is of course no reason to quarrel with the deceased's own estimation. As a nurse she would be expected to know or to be able to guess fairly accurately the volume of liquid. Now 2 ozs. of a 1% solution mean rather more than 8 grains or about 500 mg. of the alkaloid. As against this, the maximum single dose is 1 mg., the maximum in 24 hours is 3 mg. according to Australian, Belgian, Nordic and Rumanian Pharmacopoeias. In the Netherlands Pharmacopoeia, the maximum single dose is 2 mg. and the maximum in 24 hours is 6 mg. In the British Pharmacopoeia the figures are 0.6 and 1.2 mg. respectively (see Extra Pharmacopoeia by *Martindale*, 25th Edition, 1967 at p. 1093). I understand that in the administering of poisons therapeutically, a dose that exceeds 10 or 20 times the maximum permissible dose would ordinarily be fatal. The maximum permissible single dose, to take the greatest figure, is 2 mg. The deceased took 500 mg. It is therefore certain and beyond argument that the deceased had ingested even on her own admission in one single dose eserine far in excess of any reasonable margin of safety. The dose must be regarded as lethal.

Another circumstance that is of some relevance is the state of the deceased's stomach at the time of the ingestion. She had a meal at about 1.15 or 1.30 p.m. that afternoon. There was no evidence of any other meal. This would be some $2\frac{1}{2}$ to $2\frac{3}{4}$ hours before the poisoning. There was no evidence of what she ate, but I think it would be fairly correct to assume a meal of rice and curry. No evidence was adduced from the contents of the stomach wash-out as to the state of the digestion but Dr. Dato Megat Khas had stated that from the time that had elapsed, digestion would have been fairly complete and it would appear from the stomach wash-out that it had been completed. I bear in mind of course that Dr. Dato Megat Khas looked at the stomach wash-out some $3\frac{1}{2}$ years after its extraction and what food particulars there might have been would have dissolved even in the diluted digestive juices present in the wash-out but I have no reason to disbelieve his evidence on the time factor and I think it was reasonably certain that the poison was drunk on an empty or an almost empty-stomach. Now it is a physiological truth that absorption via the stomach lining proceeds much faster on an empty than on a full stomach. From *Lawrence's* Clinical Pharmacology at p. 347, it would appear that eserine is absorbable even through the skin. From this the conclusion must follow in my view that eserine is fairly easily absorbed and that the absorption through the mucous lining of the stomach must be fairly fast.

The difficulty in this case is the lack of any knowledge made available to me of what is the lethal dose, the rate of absorption and the actual times of the taking of the poison and the treatment. I had myself endeavoured to discover the lethal dose and the rate of absorption, to find out whether there was in this case and if so, what was the point of "no return" after which nothing could have been done to save this unfortunate girl. I had laboured somewhat in this search and it had been responsible for the delay in this judgment. If I had occasioned any perturbation or annoyance by this delay I offer my regrets, and I would explain that it was not neglect of duty that had caused it.

I regret I have been unable to find out the lethal dose and it would appear, perhaps for obvious reasons and in view of its rarity that it is not known what is the lethal dose in relation to body weight. But if one accepts the ordinary medical practice of regarding anything beyond 10 to 20 times the recommended dose in a recognised pharmacopoeia as lethal, it is certain that the staff-nurse had taken more than a fatal dose, and as is said in *Taylor's* Principles and Practice of Medical Jurisprudence (11th Edition) page 220, the greater the dose of a poison the more unerring and rapid in its effect.

In this connection, it must be borne in mind that there is, as I have pointed out earlier on, no antidote to eserine. If any standard work on pharmacology refers to an antidote, it has used the word very loosely to mean a specific drug. Where a true antidote neutralises the direct chemical or physico-chemical nature of the drug, all that an antagonist does is to utilise the power which it possesses of interferring with the other drug's action upon the enzymes tissues, cells or opposing nerve systems. Atropine does not neutralise the chemical nature of eserine. Its antagonism to eserine is in its opposite effects on the heart rate, the state of the pupils and glandular secretary activities. *Lawrence* has written at pages 346-347:

"Death is due to a combination of the actions in the central nervous system, to paralysis of the respiratory muscles by peripheral neuromuscular block, and to pulmonary oedema and bronchial obstruction due to circulatory and bronchial secretary changes; these together may culminate in respiratory failure. The central effects, and those due to stimulation at post-ganglionic cholinergic nerve endings and vasodilatation, are antagonised by atropine. The neuromuscular block is not, for atropine does not antagonise acetycholine at the endings of nerve fibres which arise in the central nervous system."

From this I gather that atropine does not reactivate the enzyme whose presence is essential to the nervous system of respiration. In other words there are certain effects of eserine which are not antagonised by the action of atropine and these effects may by themselves or cumulative with the residue of other effects not fully antagonised by atropine be sufficient to cause death.

All these circumstances are factors which according to Lord Cohen L.J. I must take into consideration and which, with respect, are in my view, relevant. To

my mind, having regard to the delay of the deceased herself in seeking medical attention, the grossly heavy dose of the eserine ingested into an empty or nearly empty stomach, the readily absorbable and deadly nature of the poison, the partially effective result of atropine as the antagonist of choice and the doubtful advantage of administering gastric lavage, I do not think that by merely proving that the gastric lavage could have been administered at the casualty room some 2-3 minutes before it was actually administered in the ward, the plaintiff had discharged the onus which is on him, even on a balance of probability, to establish negligence on the part of the hospital authorities or of Dr. Kooi or any of its other servants through any delay occasioned by not administering the gastric lavage in the casualty room.

The defendant's alleged breach of the statutory provisions of Federal Subsidiary Legislation No. 440 of 1952 has been conceded by counsel for the plaintiff as being inapplicable.

In the result, the plaintiff has failed to prove any of the particulars of negligence in his statement of claim. The claim is therefore dismissed with costs.

Claim dismissed.

Solicitors: *Mahendran & Co.*

V.A.M. HUSSAIN v. BP MALAYSIA SDN. BHD.

[F.C. (Azmi L.P., Suffian and Ali F.JJ.) March 2, 1970]

[Kuala Lumpur — Federal Court Civil Appeal No. X83 of 1969]

Land Laws — Charge — Principal sum payable on demand — Form of demand — Payment of interest — Discretion of court — Civil Law Ordinance, 1956, s. 11 — National Land Code, 1965, s. 255 and Form 16E.

This was an appeal against the judgment of the High Court in favour of the respondent on a claim for $45,000 secured by a charge on land. The principal sum secured by the charge was payable on demand and this was made in Form 16E. In the form demand was made of the principal sum due and interest.

Held, dismissing the appeal: (1) in this case as the principal sum secured by the charge was payable on demand. the respondent had used the correct form, *i.e.* Form 16E;

(2) the inclusion of interest in the Form 16E did not make the notice defective;

(3) the court had a discretion to award interest under section 11 of the Civil Law Ordinance and the learned judge had rightly exercised his discretion in this case, but despite the bank rate the rate of interest should be the rate usually awarded by the court, namely, 6%.

FEDERAL COURT.

K. Rajanayagam for the appellant.

Tan Jake Lian for the respondent.

Cur. Adv. Vult.

Azmi L.P.: I have read the judgment of my brother Suffian F.J. I agree with him that the appeal should be dismissed with costs but the rate of interest be reduced from 8 to 6 per cent.

The deposit of $500 will be paid to the respondent towards his taxed costs.

Suffian F.J.: The appellant had a piece of land 36.45 poles in area on the Klang Road in Kuala Lumpur. BP Malaysia thought it a good site for a filling and service station commonly known as a petrol pump. They agreed to buy it for $90,050. They also agreed to advance the appellant $45,000. If the city government had allowed a petrol pump to be built on the land, we would have heard nothing more about this matter, but they did not allow it.

At the time of the transaction BP on 13th July, 1967, entered into an elaborate written agreement with the appellant. It is clear from the terms of that agreement that BP were interested in the land only for use as a site for a petrol pump. The appellant was to cooperate in obtaining permission. Then there is clause 13 of the agreement which provides—

"In the event of the said building plans of BP being disapproved by the relevant authority ... all moneys paid by BP to the vendor ... [this was a reference to the $45,000] shall forthwith be refunded by the vendor [appellant] to BP and this agreement shall be at an end and of no further effect."

To further protect themselves, on the same day BP had the land charged to them to secure repayment of the $45,000. Clause 1 of the annexure to the charge states simply —

"The chargor [appellant] shall on demand in writing by the lender [i.e., BP] repay to the lender without interest the said sum [of $45,000]..."

Clause 2 says —

"Any demand for payment of the moneys intended to be hereby secured may be made by a notice in writing in such form as may be prescribed by or under the National Land Code..."

When planning permission was refused, BP on 26th February, 1968, sent the appellant a notice in Form 16E of the National Land Code demanding payment of the $45,000 within one month. The appellant did not pay and so on 9th July, 1968, BP took out an originating summons for an order that the land be sold to satisfy the sum of $45,000 together with interest at the rate of 8% per annum from 28th February (not the date of the advance but the date when the notice is thought to have reached the appellant) to the date of payment.

On 20th June, 1969. BP won the order sought and the appellant appeals.

The first point taken that the charge (on which the originating summons was taken out) and the agreement should be read together and until the agreement is terminated the charge which was made pursuant to clause 5 of the agreement cannot be enforced. I do not think there is anything in this. Clause 13 of the agreement plainly says that in the event of building plans being disapproved by the relevant authority the $45,000 shall forthwith be refunded and *"this agreement shall be at an end and of no further effect."*

It is next argued that in fact building plans had not been disapproved within the meaning of clause 13